



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 10, 1998

Mr. W. F. Palmer  
Palmer Law Firm, Inc.  
201 W. Grand  
Marshall, Texas 75670

OR98-2156

Dear Mr. Palmer:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 117960.

The City of Marshall (the "city") received a request from an attorney, on behalf of the requestor's client, for various documents that concern the client's termination or that relate to the termination. You indicate that the police officer who is the requestor's client was put on indefinite suspension and that the requestor is representing the officer in an appeal of that disciplinary action. You submitted to this office as Exhibit B certain documents that you contend are excepted from disclosure pursuant to section 552.103(a) of the Government Code and section 143.089 of the Local Government Code.

We address your claims under section 143.089 of the Local Government Code, which provides for the maintenance of both a police civil service file and an internal, departmental file. Section 143.089(a) through (c) details what types of information must be maintained in a police officer's civil service file and also what types of information may not be placed in the police officer's civil service file.

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the

misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and

(3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

Section 143.089(d) states that if negative information is placed in the civil service file, the civil service director must notify the affected police officer, who has a right to file a written response to the negative information that was placed in the file. Section 143.089(e) provides a police officer a mandatory right of access to information in his or her civil service file.

Other information, including the types of information that section 143.089(b) and (c) prohibit from being placed in a police officer's civil service file may be maintained in the police department's internal file, as provided in section 143.089(g):

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

The court in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), addressed the availability of information that is contained in the department's internal file pursuant to section 143.089(g). The court determined that section 143.089(g) makes confidential any records kept in a department's internal file.

You characterize the information at issue as section 143.089(g) records that are maintained in the police department's internal file. Although section 143.089(e) contains a mandatory right of access for a police officer to records in that officer's civil service file, there is no special right of access for a police officer to review documents in the internal, section 143.089(g) file. Thus, as you state the records at issue are maintained in the section 143.089(g) file, they are confidential and may not be disclosed to the police officer or the requestor, who represents the officer.

We note, however, that some of the information requested appears to be the type of information that should be maintained in the police officer's civil service file. The attorney has asked for the officer's personnel file, documents pertaining to the disciplinary actions taken, and the officer's response to the matter. Because section 143.089(e) provides that a police officer has a mandatory right of access to his or her own civil service file, section 552.103(a) may not be used to deny the officer's mandatory right of access. *See* Open Records Decision No. 598 (1991) (regarding mandatory access provisions and section 552.103(a)). A police officer or his attorney has a mandatory right of access to information required to be maintained in the civil service file.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref: ID# 117960

Enclosures: Submitted documents

cc: Mr. Michael Rickman  
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(w/o enclosures)